An Agricultural Law Research Article

Differential Assessment and Local Governmental Controls to Preserve Agricultural Lands

by

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DIFFERENTIAL ASSESSMENT AND LOCAL GOVERNMENTAL CONTROLS TO PRESERVE AGRICULTURAL LANDS

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This article discusses means by which agricultural land may be preserved from urban development. The author discusses three tax related methods to achieve this goal, including preferred assessment, deferred taxation, and restrictive agreements. The author notes, however, that taxation alone will not be sufficiently effective and so discusses other methods of preventing urban encroachment including agricultural zoning and "timed development." The author concludes that only a combination of these means can achieve the goal of orderly development and preservation of land as a natural resource.

INTRODUCTION

The premise of this article is that land is a valuable natural resource which must be protected for the benefit of present and future residents. Society has traditionally taken land for granted and not until recently have attempts been made to generate public interest in the "policing" of land use. This is unfortunate in that productive agricultural land is often capable of indefinite renewal. Thus, while other natural resources such as oil or coal can only be used once, land, if properly treated, can be used permanently. On the other hand, if society fails in its obligation to protect agricultural land, it may be irretrievably diverted from agricultural use. This article will focus on the diversion of agricultural land, and in particular, prime agricultural land, from agricultural use to urban use and will examine alternatives to such diversion.

Recently, for example, an agricultural task force in Connecticut recommended the purchase of development rights by the state when farm land is offered for sale.[1] Other states have already taken concrete action. Maine in 1970 passed conservation easement enabling legislation, the chief purpose of which was to protect scenery.[2] The purchase by the government of development rights on wide strips of agricultural land has had the effect of protecting a considerable amount of prime farm land. At least one other state, Pennsylvania, has enacted legislation allowing governmental purchase in fee simple. After such a purchase the government can sell the land

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1. Sioux Falls Argus-Leader, Feb. 14, 1975 § C at 9, col. 5.
2. ME. REV. STAT. ANN. tit. 36, §§ 585-93 (Supp. Pamphlet 1973).

on the open market subject to restrictions on permitted uses.[3] This method is also in use in British Columbia.[4]

These responses have been stimulated by the loss of farm land caused by the expansion of the cities to the suburbs. Not only has the population been migrating to the suburbs, but there has also been a significant movement of industrial and commercial enterprises out of the central city. This has resulted in an annual conversion of 1.5 million acres of land, much of it prime farm land, from agricultural to urban uses.[5] This conversion has proceeded without any meaningful direction:

> To date, few jurisdictions have successfully controlled growth in the urban fringe. There are many reasons why. A major one is simply the lack of meaningful policies and programs for dealing with growth. Another is the breakdown in implementation devices.[6]

This article suggests that an effective program can be constructed around a basic legislative package providing for economic incentives for owners of productive farm land to maintain the existing agricultural use. Such a program could be based upon policies providing for property tax relief for the farm landowners in exchange for partial relinquishment of their discretion over the use to which the land is put. This economic incentive, coupled with local government controls over unfettered commercial and residential development, could evolve into a practical program for control over urban sprawl with a minimum of direct governmental intervention.

It is not and should not be any state's goal to prevent development of farm land. Rather, the goal should be to control development so as to avoid unnecessary withdrawal of farm land from production and to insure that only a minimum number of acres of prime agricultural land is converted to urban uses. A balance of the broader interest of the region or state should be sought. This article will outline one of the many proposals to accomplish these objectives. It includes a form of differential taxation which, together with commitments by the land owners and local government controls, should induce a balance of interest. It is important to this writer that a certain amount of discretion in land use be preserved if possible. Thus the proposal will ideally result in the desired control over conversion of prime agricultural land with a reservation of a maximum level of discretion with the landowner

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3. PA. STAT. ANN. tit. 32, §§ 5001-13 (1967).

4. *See* F. SARGENT, ALTERNATIVE METHODS FOR KEEPING LAND IN AGRICULTURE 5 (Vermont Experiment Station Journal Article 310, 1973) [hereinafter cited as SARGENT].

5. Isberg, *Controlling Growth in the Urban Fringe*, 28 JOURNAL OF SOIL AND WATER CONSERVATION 155 (July-August 1973) [hereinafter cited as Isberg].

6. *Id.*

and without outright government ownership of the development rights.

AGRICULTURE: A CRITICAL NATIONAL RESOURCE

The rapidly increasing rate of conversion of farm land to urban uses is a problem which demands immediate attention. There is now a world food shortage; consequently, the potential of American agriculture makes productive farm land a critical national resource. The United States has therefore come under considerable pressure to assume a greater role in providing food for less productive nations.[7]

Beyond fulfillment of its international duty, the United States has other reasons to gain some control over the diversion of productive farm land. The industry of agriculture not only generates a commodity that is necessary for subsistence, but it also contributes substantially to the nation's economic health. This contribution has often been taken for granted. The region-wide economic contribution of agriculture is seldom considered, for example, when developing farm land which because of its proximity to an urban area is conducive to a more intensive or commercial use.

Agriculture has, however, recently gained some recognition as a critical national resource. Both versions of the National Land Use Planning Act included regulation for areas of critical environmental concern. Those areas were defined to include: "Renewable resource lands where uncontrolled or incompatible development could endanger future water, food, and fiber requirements of more than local concern . . . to include agricultural, grazing and forest lands."[8] In a proposal before the 1973 Michigan Legislature, an area of critical environmental concern was defined as: "Soil of USDA classes I-IV or otherwise suitable for agricultural or horticultural purposes."[9] A similar proposal in Maryland included "productive agricultural lands" on a list of characteristics to be considered in designating areas of critical state concern.[10]

In 1975, for the second consecutive year, the South Dakota Legislature has considered and failed to enact a critical areas bill.[11] The objective of the critical areas legislation was to identify areas of critical state-wide concern and assist the local governments in preparation of plans and regulations for the wise use of such areas. Among the several classifications of areas of "critical state concern"

7. At the recent World Food Conference, for example, Sayed Ahmed Marel, Conference Chairman, "called on all donor nations . . . to at once commit themselves to an international relief effort for the score of countries in the grip of famine." N.Y. Times, Nov. 13, 1974, at 3, col. 1.
8. H.R. 10294, 93d Cong., 1st Sess., § 413(a)(3) (1973).
9. H.B. No. 5055, Michigan (1973).
10. House of Delegates No. 807, Maryland (1974).
11. S.B. No. 11, South Dakota Legislature (1975).

was: "An area where prime agricultural land is threatened by development which clearly would not provide increased benefit to the state."[12]

Prior to the introduction of the first critical areas legislation in South Dakota in 1974, the South Dakota Planning Bureau had prepared a "Policy Plan for Land Use."[13] One of the goals for land use policy and planning incorporated within that document was the "Preservation of the state's food and fibre producing capacity in the national interest, and protection of areas of prime agricultural land from encroachment."[14] Land to be protected was to be designated as a "Critical Area":

> Only about 10% of the land area of South Dakota is considered as Class I land—that is having few limitations for agricultural use normally found in this climate. Irrigable lands, especially, are limited in extent and should be protected from urban encroachment. Where it can be demonstrated that prime land is unnecessarily endangered by major urban development, that land should be designated a critical area.[15]

The South Dakota Planning Commission was instrumental in initiating the critical areas legislation, but evidently not enough interest or concern has been generated in this state to put such a policy into practice.

The Planning Commission recommended supplementing the critical areas proposal with the implementation of long range programs designed with the same objective—to protect prime agricultural land:

> The criteria for critical areas designation includes the demonstration of threat to prime agricultural lands. There is a need for this emergency type of action to be supported by the establishment of policies which give real economic incentives for conservation and the continued farm and ranch use of land best suited to these purposes. Agricultural prosperity which generates the capital needed for effective land management needs to be supplemented by measures which inhibit the temptation to convert the use of land during a time of high prices in hopes of quick financial gain.[16]

The long range programs suggested by the Planning Commission included providing economic incentives for maintenance of land in agricultural use. These economic incentives may take the form of protecting agricultural land through a dual assessment policy giving farm land a tax break. An opposite approach may be taken

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12. *Id.*
13. SOUTH DAKOTA STATE PLANNING BUREAU, POLICY PLAN FOR LAND USE (Jan. 7, 1974).
14. *Id.* at 23.
15. *Id.* at 34.
16. *Id.* at 41.

by taxing all urban property identically, whether unused, underused or developed, thereby creating an economic incentive to develop the unused property in an urban area.[17]

The Role of Agriculture in Land Use Planning

Dr. Neil Harl, a noted economist at the University of Iowa, has made a compelling plea to activate agricultural interests in the movement for national and local land use planning legislation:

> Much of the push for land use legislation up to now has occurred outside agriculture. Yet agriculture has a vital interest in development and implementation of land use planning and control efforts. Agriculture cannot easily be indifferent to land use planning debate and policy formulation at this critical stage.[18]

Yet the response of the farmer has not generally been adequate: "[A]gricultural interest groups have consistently opposed, studiously ignored, or smuggly disregarded the types of national and most state land use initiatives . . . ."[19] Unfortunately this reply ignores the reality that there will soon be some alteration in the prevalent pattern of American agriculture.

It has been said, for example, that we are experiencing a "quiet revolution" in land use control.[20] The "quiet revolution" is a transformation from strictly local governmental control over the use of land to "some degree of state or regional participation."[21] This revolution is accompanied by a change in the concept of the term "land." For many, the term "land" has meant the strictly private concept that the land's only function is to enable its owner to make money. However, a widespread public interest has grown in the use to which land is put; along with this interest comes public control. It is thus important that the agricultural sector and those persons who comprise it should give the proposed land use legislation direction consistent with their land management philosophy. To fail to do so will abdicate the decision-making to others.

Lawrence Libby, an agricultural economics professor at Michigan State University, for example, has stated that agriculture itself should initiate land use programs that acknowledge the role of the farm manager.

> Retaining land is not enough. The economic circumstances that encourage active farming must also exist. . . . When

17. *Id.* at 42.
18. Harl, *Looks Like Landmark Land Use Legislation—1975 and 1976*, 16 AGRI FINANCE 74, 75 (March/April, 1975).
19. Libby, Land Use Policy: Implications for Commercial Agriculture 19 (Paper presented at Am. Agric. Economics Ass'n meeting, Texas A&M Univ., Aug. 1974) [hereinafter cited as Libby].
20. F. BOSSELMAN & D. CALLIES, THE QUIET REVOLUTION IN LAND USE CONTROL 1 (1971).
21. *Id.*

> the judgment and initiative of the land owner are instrumental in the land program, chances for success in retaining agriculture would seem better.[22]

Professor Libby notes further that discretionary action by the person managing the land is highly critical to the preservation of the land as a natural resource.[23] To take all control away from the farmer would have highly adverse consequences.

The trends which the farmer and the rest of American society must face are succinctly summarized within the new definition of the rightful control of the land.

> The farmer cannot expect unlimited land use discretion in the future. Our changing political environment just will not permit that. The challenge for farmers, farm interest groups and professional agriculturalists is to participate actively in building land use institutions that retain the elements of discretion necessary for agriculture. Given the dispersed character of agriculture and the complexities of understanding and documenting the needs and contributions of agriculture, those institutions may need a state or regional base.[24]

A proper, interested and informed approach by those in the agricultural sector can help to insure that farmers do not lose control over what they can do best—manage their own farms.

Differential Assessment Laws

The concept of land owner discretion provides a basis with which to evaluate the various forms of differential real property assessment laws. Differential assessment laws involve the assessing of agricultural land for tax purposes as if it were of value only for farming, thus reducing the real estate tax burden on actively farmed land.[25] This reliance on economic incentives is an important characteristic of differential assessment laws in all thirty-eight states which have such laws.[26] Furthermore, all existing differential assessment laws preserve land use discretion in the farmer and differ only in the form of the incentive.[27]

Pressures to Convert Land Use

To appreciate the role that differential assessment laws can play in preservation of farm land one must understand two sources

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22. Libby, *supra* note 19, at 17-18.
23. *Id.* at 20.
24. *Id.* at 20-21.
25. T. Hady & A. Sibold, State Programs for the Differential Assessment of Farm & Open Space Land 1 (Agric. Economic Report No. 256, Economic Research Service, United States Department of Agric., April 1974) [hereinafter Hady & Sibold, State Programs].
26. T. Hady & A. Sibold, Property Tax Relief for Farmers: New Use for Circuit Breakers 1 (Information Bulletin No. 74-8, Advisory Comm'n on Intergovernmental Relations, Aug. 1974) [hereinafter Hady & Sibold, Circuit Breakers].
27. *See generally id.*

of economic pressure that exist to convert farm land to urban uses. The obvious, most direct and influential pressure is "price pressure."

> Few land uses return less per unit of land than agriculture . . . . Price of land invariably reflects expected future earnings discounted by some measure of uncertainty. The possibility of higher future earnings is particularly significant for open land. Chances for future development . . . can effect the farmer's willingness to invest in the business. Far more land is affected by the possibility of development than can ever actually be used. The frequent result is that much land is prematurely pulled out of farming by unspecified development potential when land allocation relies entirely on a land market replete with misinformation.[28]

A second source of economic pressure arises from the reliance of local units of government on property taxes for local services. This "reliance . . . is a formidable incentive for the development of open land"[29] and farmers have traditionally paid a greater portion of their income for property tax than other citizens. In 1971, for example, property tax on farm property amounted to an estimated 7.6 percent of income while for the whole population it was only 4.4 percent.[30] An even greater disproportionate burden is borne by farmers with land in close proximity to cities in which the valuation of the land is inflated considerably above its value as farm land. A certain benefit does, of course, inure to the landowner when the fair market value of the land has appreciated under the influence of urban development potential and speculation. In order to realize that benefit, however, the landowner has only two courses of action available to him. He can either convert the land from agriculture to a more intensive use or sell to another who intends to convert the land. Before conversion, the landowner is faced with a property tax burden disproportionate to the income generated from the land.

Since 1956, in the interest of relieving this tax burden on farmers, several state legislatures have enacted differential assessment laws.[31] There are three types of differential assessment laws: 1) preferential assessment, 2) deferred taxation, and 3) restrictive agreements. All three of these categories have one common characteristic; they include some provision for property tax relief. These categories of differential assessment laws differ in the degree to which the state or local government obtains something in return for the tax relief afforded the property owner and in the degree of participation by the local government.

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28. Libby, *supra* note 19, at 4.
29. *Id.*
30. HADY & SIBOLD, STATE PROGRAMS, *supra* note 25, at 1.
31. *Id.* at 2.

Preferential assessment laws, for example, do not demand anything in return from the farmer, nor is there any participation by local government. The state merely dictates that as long as the land is used for agricultural purposes it will be taxed at its value as agricultural land. Deferred taxation laws also provide that the land be taxed at its value as agricultural land but in addition they provide that when land is converted from agricultural to nonagricultural use a penalty is paid. Restrictive agreements also involve the lower taxation but their hallmark is that the farmer makes an agreement with the state not to change the use of his land for a specified period, usually ten years. The state pays the farmer an appropriate amount for this agreement. These three types of laws will be studied in detail below and examples of each will be discussed.

PREFERENTIAL ASSESSMENT

Preferential assessment is the simplest form of differential assessment. Eleven states employ it.[32] It is considered to be the simplest form of differential assessment because, although it grants property tax relief to farmers whose taxes have been pushed upward by pressures of urbanization, it asks nothing of the farmer in return. The local community must bear the burden of the tax revenue loss resulting from lower taxes on the agricultural land. Preferential assessment provides the desired tax relief to farmers by assessing land on the basis of its value for agricultural use only. One side effect, however, is that it creates an incentive for real estate speculators to invest in farm land. They may purchase the land, hold it while paying low taxes and take advantage of rising prices by ultimately selling it. Thus, on one hand, preferential assessment laws weaken one economic incentive for converting farm land to a more intensive urban use by relieving the property tax burden. On the other hand, such laws, without more, have the effect of strengthening the second source of economic incentive, price pressure. The "speculator's haven" created by preferential assessment laws maintains and even enhances the influence upon farmers to sell their land to nonagricultural interests.

Preferential Assessment in South Dakota

South Dakota is one of the eleven states which have preferential assessment laws. Like many states, South Dakota had to amend its Constitution to empower the legislature to classify property so that taxes need be uniform only as to property of the same class. Article VI, section seventeen of the South Dakota Constitution provides: "all taxation shall be equal and uniform."[33] In 1930,

32. *Id.*
33. S.D. CONST. art. VI, § 17.

Article VIII, section fifteen of the Constitution was amended by adding the following language: "The Legislature is empowered to classify properties within school districts for purposes of school taxation, and may constitute agricultural lands a separate class. Taxes shall be uniform on all property in the same class."[34]

Pursuant to this authority, the South Dakota Legislature in 1931 classified agricultural and nonagricultural property for purposes of school taxation.[35] Agricultural property was defined as follows:

> Agricultural property within an independent school district includes all property used exclusively for agricultural purposes which is not handled for resale by wholesale or retail dealers. It includes all land used exclusively for agricultural purposes both tilled and untilled, the buildings, structures and other improvements on such land, and the livestock and machinery located and used on such agricultural land.[36]

In 1974 the state legislature amended this law to specifically override any local zoning ordinance:

> Land devoted to agricultural use shall be classified and taxed as agricultural land without regard to the zoning classification which it may be given; provided, however, that all or any portion of such land which is sold or otherwise converted to a use other than agricultural shall be classified and taxed accordingly.[37]

The legislature has also provided that the first eight mills of real property taxes are levied equally on agricultural land and nonagricultural land. Additional mills on agricultural land apply at only one half the rate of the additional mills on nonagricultural land, with a maximum of twenty-four mills on agricultural land.[38]

Having provided for the classification and taxation of land for school purposes, the legislature set out factors to be considered in determining the value of agricultural land:

> In fixing the true and whole value in money of property, under the provisions of section 10-6-33, the value of agricultural land as defined by section 10-6-31, and which has been used primarily for agricultural use for at least five successive years immediately preceding the tax year for which assessment is to be made shall be based on consideration of the following factors:
>
> (1) The capacity of the land to produce agricultural products as defined in section 10-6-33.2;
>
> (2) Soil, terrain, and topographical condition of the property;

34. *Id.* art. VIII, § 15.
35. S.D. COMPILED LAWS ANN. § 10-6-31 (1967).
36. *Id.*
37. *Id.* § 10-6-31.1 (Supp. 1974).
38. *Id.* § 10-12-31.

> (3) The present market value of said property as agricultural land as determined by the factors contained in subdivisions (1), (2), (4) and (5) of this section;
>
> (4) The character of the area of the place in which said property is located; and
>
> (5) Such other agricultural factors as may from time to time become applicable.[39]

As illustrated by the foregoing, such laws do no more than provide a tax break for agricultural property owners. Furthermore, this method has the drawback that any tax benefits will go both to farmers and speculators and will possibly encourage additional speculation. Governor Kneip of South Dakota has stated that he intends to propose legislation in 1976 to alter the law so that speculators would not share in its benefits.[40]

It would thus appear that there are two principal benefits which accrue from preferential assessment laws in South Dakota and elsewhere. The intended benefit is, of course, to provide a tax break and ease the burden on owners of farm land adjacent to rapidly developing urban areas. The second, and perhaps unintended benefit, that would appear to be derived from such a tax system is the resultant preservation of productive farm land; but such a benefit does not necessarily follow because of the counterbalancing effects of land speculation. In sum, although such laws may postpone urban development for a time, there is no guarantee that the protection will be lasting.

> Reliance on tax reduction almost certainly will not be effective in preserving farms and other open land because the taxes are small relative to the potential gains. It is not uncommon to hear of development pressures causing land values to rise to five or ten times the level associated with agricultural use. In contrast, property taxes typically are only two or three percent of the value of the property, and only a portion of this is waived as an inducement to keep the land from being developed. Even the larger penalties usually provided for in restrictive agreements law . . . will often be quite small relative to the financial gains offered by development.[41]

If the goal of protecting prime agricultural land from unnecessary urban development is to be realized, something more than preferential assessment laws is necessary. If differential assessment is to be used as an effective tool for implementing a region-wide plan for land use, some of the discretion over land use must be sacrificed or exercised in a predetermined manner.

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39. *Id.* § 10-6-33.1, *as amended* by H.B. 662, South Dakota Legislature (1975).
40. Sioux Falls Argus-Leader, April 5, 1975, at 1, col. 7.
41. HADY & SIBOLD, STATE PROGRAMS, *supra* note 25.

Deferred Taxation

The deferred tax is the most common approach to differential assessment. As in preferential assessment, agricultural land under the deferred tax approach is assessed on the basis of that land's use as farm land as opposed to an assessment of its fair market value. In addition, however, a provision is added under the deferred tax system for recovering some of the taxes saved if and when the use is converted from agricultural to urban. Twenty-one states have deferred taxation systems.[42]

This variation in differential assessment laws appears to compensate for two inequalities present under the simple provision for preferential assessment. First, the deferred tax system recognizes that the farm owner who benefits by these laws also has the benefit of an appreciation in the value of his land. The land owner's ability to pay the higher tax is deferred until the date that he has opportunity to realize that appreciation. Rather than permit such a landowner to benefit by the appreciated land values without sharing his responsibility for the tax burden, these "deferred taxation" states have seen fit to defer the tax to the time that the landowner has the ability to pay. The second inherent inequality in preferential assessment laws is that the local unit of government assumes the costs of a social and economic benefit to all the people of the state and region. Although preferential assessment is designed to ease the tax burden of the local farmers, its broader social benefit includes the preservation of productive agricultural land. The local units of government bear the entire cost of lost tax revenues that would have been assessed on the current use as well as additional tax revenues that would have been generated by urban development of the land. In contrast to the preferential assessment scheme, a system of deferred taxation requires farmers whose taxes are reduced while the land is used in agriculture to return part or all of the reduction when a conversion to nonagricultural use occurs. Thus the local unit is reimbursed for the burden it bears. As in the case of preferential assessment, however, the farmer retains complete control over the decision of when to convert the land to urban uses.

Even deferred taxation is, then, quite limited as an effective tool for the preservation of productive agricultural land. It does relieve an economic pressure upon the landowner momentarily and to that extent may postpone commercial development of the area, but there is no assurance that the agricultural use will not be prematurely discontinued. Neither preferential assessment nor deferred taxation provides the incentive to withhold prime agricultural land from commercial development until such land is *neces-*

42. *Id.* at 2.

sary for urban development. Deferred taxation does little more than relieve the local units of government from bearing the entire cost of the tax benefit enjoyed by the landowner. As an encumbrance upon the land, potential taxes rarely deter commercial development; they merely become a consideration in negotiating the purchase price. Deferred taxation falls short of reaching the goal of postponing urban development of prime agricultural land until the balance of region or state-wide interests tip in favor of development.

Examples of Deferred Taxation

The statutes in Connecticut and Minnesota provide examples of the variety in deferred taxation laws. In Connecticut, upon application and qualification, a landowner may have his farm land assessed at a value based on its current use.[43] Any land which has been classified as farm land will be subject to a conveyance tax if sold within ten years from initial acquisition or classification. The rates of the tax are as follows: ten percent if sold within the first year of ownership or of classification, nine percent if sold in the second year and so forth down to one percent if sold in the ninth year.[44]

Minnesota is another state which authorizes the qualifying landowner to apply for a permanent special valuation for tax purposes.[45] The valuation is based upon the agricultural use. Once property has been valued and taxed under this law, and it no longer qualifies because of a change in its use, deferred taxes will be assessed for the preceding three years.[46]

As noted above, neither of these statutes guarantees that farm land will not be taken from production. They only penalize such action. When the penalty becomes less than the immediate economic benefit of conversion, the land is likely to be sold and converted.

RESTRICTIVE AGREEMENTS

The third type of differential assessment in use by many states today is the restrictive agreement. Under the restrictive agreement plan, the local unit of government contracts to buy the right from the landowner to regulate and prohibit changes in land use for the duration of the contract. The price received by the landowner is the difference between taxation on the fair market value of the land and taxation on the preferentially assessed value. Eleven states have provisions for such contract and agreement laws.[47]

43. CONN. GEN. STAT. ANN. §§ 12-63, 107(c) (1972).
44. *Id.*
45. MINN. STAT. ANN. § 273.111(4), (8) (Supp. 1974).
46. *Id.* § 273.111(9) (1969).
47. HADY & SIBOLD, CIRCUIT BREAKERS, *supra* note 26, at 3.

The typical duration of such a contract is ten years, and the statutes may provide that advance notice be given of an intention not to renew the contract. For example, the state of Washington provides that the land must remain in the restricted use for at least ten years.[48] Two years notice of intention to terminate the contract is required. In other words, after the eighth year, the owner can give two years notice of his desire that taxation revert to the standard method. When the land reverts to the standard method of taxation, the state imposes a penalty upon the landowner of seven years deferred taxes with interest. If the owner fails to give the two years notice and changes the use of the land, an additional penalty of twenty percent of the deferred taxes is assessed.[49] The California and New York statutes on restrictive agreements are of particular interest and will be analyzed in detail below.

California Restrictive Agreements

California enacted its Land Conservation Act of 1965 upon the following legislative findings:

> (a) That the preservation of a maximum amount of the limited supply of agricultural land is necessary to the conservation of the state's economic resources, and is necessary not only to the maintenance of the agricultural economy of the state, but also for the assurance of adequate, healthful and nutritious food for future residents of this state and nation.
>
> (b) That the discouragement of premature and unnecessary conversion of agricultural land to urban uses is a matter of public interest and will be of benefit to urban dwellers themselves in that it will discourage discontiguous urban development patterns which unnecessarily increase the costs of community services to community residents.
>
> (c) That in a rapidly urbanizing society agricultural lands have a definite public value as open space, and the preservation in agricultural production of such lands, the use of which may be limited under the provisions of this chapter, constitutes an important physical, social, esthetic and economic asset to existing or pending urban or metropolitan developments.[50]

This Act authorizes any city or county to contract to "limit the use of agricultural land for the purpose of preserving such land."[51] These provisions are not mandatory,[52] but when a contract is entered into, that contract shall provide for the exclusion of uses other than agricultural uses or those compatible with agriculture for the

48. HADY & SIBOLD, STATE PROGRAMS, *supra* note 25, at 64.
49. *Id.*
50. CAL. GOV'T CODE § 51220 (West Supp. 1975).
51. *Id.* § 51240.
52. Kelsey v. Colwell, 3 Cal. App. 3d 590, 106 Cal. Rptr. 420 (1972).

duration of the contract.[53] Under this Act, the city or county must establish agricultural preserves before contracting with area landowners.

Agricultural preserves are required to define "the boundaries of those areas within which the city or county will be willing to enter into contracts pursuant to this act."[54] These preserves must ordinarily include at least one hundred acres. Smaller preserves may be allowed when necessary because of the unique nature of the agricultural operation in the area, and when such preserves are consistent with the general plan of the county or city.[55]

An agricultural preserve may contain land other than agricultural land but the statute provides that restrictions be put upon the use of any land located within the preserve which is not under contract. These restrictions may, for example, take the form of zoning regulations but must be designed to prohibit uses incompatible with the agricultural use of land subject to a contract. Further, they must be imposed within two years of the effective date of any contract on land within the preserve.[56]

Farmers who qualify may enter into contracts with the city or county to obligate themselves to a particular land use, such as agriculture or a use compatible to agriculture. Each contract is required to be at least for ten years.[57] The contract is extended an additional year annually unless notice of nonrenewal is given.[58] In exchange for the definite period of commitment to a given land use, the contracting farmer will qualify for assessment of his land on the basis of its restricted use instead of its market value.[59] The enforceable restrictions that apply to a land conservation contract or agreement are incidentally the same as those established for open space easements.[60]

In valuing land subject to a qualifying restriction, the county assessor must use a capitalization of income method.[61] This capitalization of income is based upon rental information when available. In the absence of this information, the income will be what the land can be expected to yield under prudent management subject to the restrictions.[62]

A. *Nonrenewal*

As indicated above, a land conservation is automatically re-

53. CAL. GOV'T CODE § 51243 (West Supp. 1975).
54. *Id.* § 51230.
55. *Id.*
56. *Id.*
57. *Id.* § 51244.
58. *Id.*
59. CAL. REV. & TAX. CODE § 423 (West Supp. 1975).
60. CAL. GOV'T CODE §§ 51051-52 (West Supp. 1975).
61. CAL. REV. & TAX. CODE § 423 (West Supp. 1975).
62. *Id.* § 423(a)(2).

newed for an additional year annually. When notice of nonrenewal of the contract is given, the assessor will reassess the land each year until the contract expires.[63] Reassessment will be accomplished first by determining the full cash value of the land as if it were not subject to the contractual restrictions. The restricted use value determined by the income capitalization method is subtracted from the unrestricted full cash value and the difference will be discounted at the yield rate of long-term United States Government bonds for the number of years remaining in the contract. This value will then be added to the restricted use value and the assessed value will be twenty-five percent of the total.[64] By the terms of the restrictive agreements, the landowner is not only committed to a definite number of years even after notice of nonrenewal, but also assessment of the land increases for the balance of the term of the contract.

B. *Cancellation*

A landowner is permitted to cancel the contract only if he can show the county board or city council that the cancellation is not inconsistent with the purpose of the Act and that the cancellation is in the public interest. The statute specifically states that the existence of an opportunity for another use of the land is not sufficient reason for cancellation of the contract. In fact, an alternative use of the land may be considered by the unit of government only if there is no proximate, noncontracted land suitable for the proposed use. The uneconomic character of an existing agricultural use is likewise an insufficient reason for cancellation of the contract: "The uneconomic character of the existing use may be considered only if there is no other reasonable or comparable agricultural use to which the land may be put."[65]

In the event that approval is granted for the cancellation of a contract, a cancellation fee is charged. To establish the cancellation fee the assessor is required to determine the full cash value of the land as though it were free of the contractual restriction. The assessor then multiplies that value by the twenty-five percent of its current market value.[66] The product of this calculation is the cancellation valuation of the land for the purpose of determining the cancellation fee. The fee charged is an amount equal to fifty percent of the cancellation valuation of the property. The city or county is authorized to waive payment of all or part of the cancellation fee if it finds that it is in the public interest to do so. Likewise, the local unit of government is authorized to make payment of the cancellation fee contingent upon the future use of the land

63. *Id.* § 426(a).
64. *Id.* § 426(b).
65. CAL. GOV'T CODE § 51282 (West Supp. 1975).
66. CAL. REV. & TAX. CODE § 401 (West Supp. 1975).

and its economic return to the landowner for a period of time not to exceed the unexpired period of the contract. Such waiver of the payment is conditioned by statute upon three factors:

> (1) The cancellation is caused by an involuntary transfer or change in the use which may be made of the land and the land is not immediately suitable, nor will be immediately used, for a purpose which produces a greater economic return to the owner;
>
> (2) The board or council has determined it is in the best interests of the program to conserve agricultural land use that such payment be either deferred or not required; and
>
> (3) The waiver is approved by the Secretary of the Resources Agency.[67]

By these provisions of the Act, a landowner has no power to unilaterally cancel a contract. Furthermore, the city or county could presumably use its police powers to enforce the conditions of a contract that has not been approved for cancellation. Without prior approval to cancel the contract, the landowner has no alternative but to give notice of nonrenewal and wait out the period of the contract.

California's law is obviously a well-thought out, extensively detailed attempt to deal with the loss of agricultural land. However, the effectiveness of the statute is not clear. According to one study, approximately 9.5 million acres of land "were included in the California differential assessment program in 1971—almost one quarter of the privately owned agricultural land in the State."[68] However, the study also cited a finding that the early experience with the plan showed that the land put into the program was of low quality and tended to be more than ten miles from the city.

Another recent study indicates that there may be some local dissatisfaction with the plan. According to Gunnar Isberg: "A recent study of the California statute indicates that many farmers with land near urban areas were unwilling to . . . [use the law], primarily because it requires them to devote their land to agricultural use for 10 years."[69]

Thus the defect of the plan appears to be that farmers are simply unwilling to surrender controls over their farms. Therefore, although a considerable amount of acreage is encompassed by the plan, it has not been shown that the California plan is accomplishing or can accomplish all the objectives it sought.

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67. CAL. GOV'T CODE § 51283 (West Supp. 1975).
68. HADY & SIBOLD, STATE PROGRAMS, *supra* note 25, at 11.
69. Isberg, *supra* note 5, at 2.

New York Agricultural Districts

New York's agricultural value assessment law includes characteristics of both deferred taxation and restrictive agreements.[70] It provides for a deferral of tax and an assessment of roll-back taxes for the preceding five years upon conversion of the land to a use other than agriculture. In addition, when the state initiates the creation of the district, it must compensate the local unit of government to the extent of one half the revenue lost because of the special agricultural assessment less any roll-back taxes that year.[71] Where no agricultural district is formed, but the land is in agricultural use, it may be differentially assessed if the landowner enters into an agreement with the local government and obligates himself to maintain that use for eight years. The penalty for breaking this commitment is a sum equal to twice the taxes due the next year on all the land covered by the agreement.[72]

A. *Legislative Findings*

New York's reasons for enacting its use-value assessment laws are typical of other states' legislative findings and intent. It is the declared policy of New York "to conserve and protect and to encourage the development and improvement of its agricultural lands" for two purposes: 1) for the production of food; and 2) to provide needed open spaces for clean air and for aesthetic purposes.[73] Specifically, the findings and intent of the New York Legislature in passing the assessment act were expressed as follows:

> Agriculture in many parts of the state is under urban pressure from expanding metropolitan areas. This . . . brings conflicting land uses into juxtaposition, creates high costs for public services, and stimulates land speculation. When this scattered development extends into good farm areas, ordinances inhibiting farming tend to follow, farm taxes rise, and hopes for speculative gains discourage investments in farm improvements. Many of the agricultural lands in New York state are in jeopardy of being lost for any agricultural purposes. Certain of these lands constitute unique and irreplaceable land resources of statewide importance. It is the purpose of this article to provide a means by which agricultural land may be protected and enhanced as a viable segment of the state's economy and as an economic and environmental resource of major importance.[74]

B. *Creation of Agricultural Districts*

Creation of agricultural districts may be initiated by submission of a proposal by owners of land within the proposed district.[75] If

70. HADY & SIBOLD, STATE PROGRAMS, *supra* note 25, at 49.
71. *Id.* at 51.
72. *Id.*
73. N.Y. AGRIC. & MKTS. § 300 (McKinney 1972).
74. *Id.*
75. *Id.* § 303.1.

at the time of the proposal no county agricultural districting advisory committee exists, one must be established to advise the county legislative body and to work with the county planning board on the proposed establishment and changes of agricultural districts.[76] A great deal of land use planning is incorporated into New York's agricultural districting law. The county planning commission is required to report to the county legislative body on the potential effect of the proposal on the county planning policies and objectives. The proposal is also referred to the agricultural districting advisory committee which must make its recommendations to the county legislative body, which in turn is required to hold a public hearing on the proposal.[77]

After considering the input on the proposal from the advisory committee, the county planning commission and the public hearing, the county legislative body may adopt the plan as proposed or modified. The plan is then submitted to the state commissioner of environmental conservation who advises the county whether the proposal is eligible for districting and whether it is consistent with state environmental plans, policies and objectives. If the proposal passes the inspection by this state agency and if the county legislative body does not thereafter disapprove the proposal, an agricultural district will have been created. The county legislative body is required to review all districts every eight years and the county advisory committee and county planning commission make recommendations for purposes of this review. The county can modify or terminate the agricultural district after extensive and proper review if, for example, the area is no longer "predominately viable agricultural land" or the continuance of the district "would not be consistent with state comprehensive plans, policies and objectives . . . ."[78]

The state may also initiate the creation of agricultural districts under certain circumstances. The commissioner of environmental conservation may create agricultural districts if

> (a) the agricultural resources commission has determined that the land encompassed in a proposed district is predominately unique and irreplaceable agricultural land . . . (b) such district would further state environmental plans, policies and objectives; (c) the directors of the office of planning services has determined that such proposed district would be consistent with state comprehensive plans, policies and objectives and (d) the director of the division of the budget has given his approval.[79]

In considering creation of an agricultural district, the state commis-

76. *Id.* § 302.
77. *Id.* § 303.2(c) (McKinney Supp. 1974-75).
78. *Id.* § 303.8 (McKinney 1972).
79. *Id.* § 304.1 (McKinney Supp. 1974-75).

sioner is required to work closely with local officials, planning bodies and agricultural interests, giving primary consideration to local needs, desires, zoning and planning regulations and regional and local comprehensive land use plans.[80] These provisions lay the foundation for a great deal of interaction between local and state land use planning interests without which there can be little successful land use planning.

C. *Operation of Agricultural Districts*

Owners of farm land within agricultural districts are not automatically eligible for agricultural value assessments. To qualify, the owner must have a minimum of ten acres used in agricultural production and a gross average sales value of at least 10,000 dollars in the preceding two years.[81] These requirements are intended to insure that only bona fide farmers will benefit by the special assessment.

The qualifying applicants are exempt from real property taxation on that portion of the value of the land used for agricultural production which represents an excess above the agricultural value ceiling. The agricultural value ceiling is determined by multiplying the number of acres used for agricultural production by the average value per acre of land used in agricultural production throughout the state.[82]

Where any agricultural district has been created by the commissioner of environmental conservation for the protection of unique and irreplaceable agricultural land, the state is required to provide assistance to the local taxing jurisdiction in an amount equal to one-half of the amount of taxes which would have been levied but for the agricultural value assessments. The local taxing jurisdiction need only apply for such assistance to the state board of equalization.[83] This provision in the agricultural special assessment law is necessary to compensate for the inherent inequality present in the simple preferential assessment system described earlier in this article. This pay-back provision may, however, be unnecessarily restrictive inasmuch as it applies only where the agricultural district was initiated by the state. When local landowners petition to form an agricultural district, the county legislative body may be hesitant to approve such a proposal because the pay-back provision would not be applicable. The county legislative body may be inclined to wait for the state commissioner of environmental conservation to initiate a proposal.

Landowners within an agricultural district are afforded special

80. *Id.* § 304.2.
81. *Id.* § 305.1(a).
82. *Id.* § 305.1(c).
83. *Id.* § 305.1(f).

benefits under the New York agricultural district law in addition to the lower assessment. For example, the local government is generally not permitted to exercise any of its powers to enact ordinances within an agricultural district which unreasonably restrict or regulate farm structures or farming practices if such ordinances would be in conflict with the purposes of the Act.[84] Furthermore, a limitation is placed upon the exercise of eminent domain powers by any state agency or local government.[85] When any state agency or local government intends to acquire land in excess of ten acres on any particular farm or in excess of a total of one hundred acres, or intends to advance funds for the construction of dwellings or facilities to serve nonfarm structures, that agency or unit of government is required to obtain prior approval from the commissioner of environmental conservation. The commissioner is required to consult with the agricultural resources commission and the director of the office of planning services

> to determine what the effect of such action would be upon the preservation and enhancement of agriculture and agricultural resources within the district, state environmental plans, policies and objectives, and state comprehensive plans, policies and objectives.[86]

D. *Agricultural Lands Outside of Districts*

A landowner in New York need not be located within an established agricultural district in order to take advantage of agricultural value assessments. Any owner of not less than ten acres of land used in agricultural production which produced a gross average sales value of at least 10,000 dollars may enter into an agreement to commit himself to such agricultural use with the state for a period of at least eight years. Such a commitment by the qualifying landowner entitles the land to be assessed for real property tax purposes as if such land were in an agricultural district.[87]

In the event any part of such land is converted to a use other than for agricultural production during the period of any such commitment, such conversion constitutes a breach of the agreement and has the effect of disqualifying all of the land subject to the agreement from special assessment. In addition, a penalty is assessed at the rate of two times the taxes determined in the year following the breach of commitment at regular assessment rates for all of the land previously under commitment. This amount is added to the taxes for that subsequent year.[88]

Like California's plan, New York's plan emerges as a many

84. *Id.* § 305.2.
85. *Id.* § 305.4(a).
86. *Id.* § 305.4(b).
87. *Id.* § 306.1.
88. *Id.* § 306.2.

faceted in-depth plan dedicated to the goal of preserving agricultural land and appears to have achieved some recognition as a successful program. Lawrence Libby summarizes:

> Broad support among the urban and suburban population of New York confirms that agriculture *as* agriculture contributes social benefit. Over 1 million acres have been designated for an initial eight year period. The hope is that 5 million of the state's 8 million acres can be preserved in some way. . . . The remaining acres may be harder to pin down, however.[89]

The New York plan, then, by combining elements of preferential taxation and of the restrictive agreement has accomplished a great deal. The New York plan, like the California plan, may encounter more resistance in the future as those who are likely to make long term agreements make them, leaving only those who resist such agreements. It is clear, however, that a mere recital of acres included in the plan is insufficient. A theoretical basis is needed to accomplish accurate evaluation of differential assessment plans.

Evaluation of Differential Assessment

The two goals of differential assessment laws must be considered when analyzing preferential assessment, deferred taxation and restrictive agreements as land use tools. One goal of such laws is to relieve the tax burden imposed on agricultural landowners when the actual cash value of the real estate exceeds the value of the land for agricultural use. The second goal is to provide an economic incentive for landowners to maintain the existing agricultural use, especially if the land is prime agricultural land.

These goals are met if the system overcomes the inequity of having the farmer pay property taxes which are high when compared to his limited income. The effectiveness of differential assessment can be tested by examining the degree to which the benefit of reduced taxation is available to bona fide farmers only as opposed to commercial developers and land speculators. The definition of "farmer" in differential assessment laws will largely determine the extent to which only "bona fide" farmers benefit by the tax break; each state's law will have to be individually examined to ascertain whether only those who were intended to benefit actually do so. The statutory definition of agricultural use together with eligibility requirements such as minimum acreages and duration of agricultural use determine the class of landowners to which the tax benefit will apply.

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89. Libby, *supra* note 19, at 16.

A second method of evaluating the goals of differential assessment laws is to determine the actual benefit accruing to the farm landowners. This may be accomplished by comparing the valuation of the land as agricultural land under any of the three categories of differential assessment to the fair market value of the land if use were unrestricted. Statutes vary considerably with respect to the guidelines provided for valuing the land based on its agricultural use. Maine, for example, simply provides that the value of classified land will be based upon its current use as determined by the tax assessor.[90] By comparison, the South Dakota preferential assessment law lists five specific factors that must be taken into consideration.[91] Even the South Dakota law, however, does not indicate how the assessment should take place. It would appear that under South Dakota law the assessor would be free to use either of two ways to determine the use value of agricultural land: 1) comparable sales or 2) income capitalization.

Another general consideration in evaluating the goals of differential assessment laws is the adverse effects, if any, of such laws. The foremost side effect of such laws is associated with preferential assessment and is a primary characteristic differentiating preferential assessment from other forms of use value taxation. Under preferential assessment laws, *e.g.*, the South Dakota law, the local unit of government assumes most of the cost of the program because of its loss of tax revenues. The setting of urban-rural development that prompts differential assessment correspondingly gives rise to a greater demand for local services. For example, strip development along a highway, leapfrog development and general urban sprawl may have caused the market value of adjacent farm land to become inflated because of speculation. This is precisely the situation that prompts a form of differential assessment of such farm land; but it also prompts a greater demand for municipal and county services.

Deferred taxation and restrictive agreements compensate for two inequitable side effects associated with preferential assessment. These two forms of differential assessment provide for a payment of back taxes or other monetary penalty when the land is converted to a nonagricultural use. These rollback provisions help compensate for the inequitable advantage enjoyed by farm landowners who benefit not only by the tax break but also by the appreciation in the farm land. These provisions simultaneously compensate the local unit of government for revenue previously denied.

One other criterion for evaluating differential assessment laws is the extent to which they accomplish their primary objective. If the objective of such a law is merely to afford the farm landowner a

90. ME. REV. STAT. ANN. tit. 36, § 590 (Supp. Pamphlet 1973).
91. *See* text accompanying note 39 *supra*.

tax break, the simple method of preferential assessment will be successful. If the objective is to accomplish control over land use, preferential assessment is very likely to be unsuccessful. In fact, preferential assessment may encourage a use contrary to desired uses by promoting speculation. Preferential assessment offers no control over the use to which the land is put except when, by chance, the tax break has prompted the farmer or land speculator to postpone converting the use of the land from agriculture to a more intensive or commercial use. Certainly the goal of preserving prime agricultural land is partially fulfilled by such postponement, but it is haphazard and does not give rise to actual control and direction over land use.

Evidence of the experience of several states has been analyzed by examining the type and location of land that was benefiting by the differential assessment laws and by determining whether agricultural land was being preserved when otherwise it would have been converted:

> The evidence on the effectiveness of differential assessment laws in preserving agriculture, then, is mixed. Some of the most direct evidence, that which analyzes whether the land placed under the law is located where it is likely to be converted to other uses, suggests that these laws are not very effective. But other evidence suggests that they may be. Nearly all studies seem to agree on one point: Differential assessment will not be effective in preserving agricultural or other open space uses by itself. It must be combined with a variety of other tools for influencing land use. . . .[92]

Other Tools for Controlling Land Use

Agricultural Zoning

Exercise of zoning powers is the traditional method of controlling land use. Zoning for agricultural use is widespread, particularly where county and regional comprehensive planning has been undertaken. Large-lot zoning could also have the effect of postponing urban development because the requirement of large lot size will discourage builders. The advantage of agricultural or large-lot zoning is in proportion to the pressure for development of the area. Agricultural zoning, however, does not, by itself, provide enough control over conversion of land from an agricultural to an urban use.

> Zoning has often been used in attempts to keep agricultural land in agriculture. This method works well until economic pressures build up to the point which is demanded by both a prospective buyer and the land owner. It can only be used effectively if it is associated with a pro-

92. Hady & Sibold, State Programs, *supra* note 25, at 12.

> fessional tax appraisal system. This is necessary to assure that land is appraised for its legal zoned uses—not for more intensive uses.[93]

Zoning is too susceptible to economic and political pressure and too easily altered to be an effective tool for the preservation of prime agricultural land. Thus even if agricultural zoning were combined with preferential assessment or with deferred taxation, the inherent flexibility in zoning would still exist and the needed protection would be unavailable.[94]

Public Purchase

For the city or state that has the resources, public purchase and resale subject to restrictions would seem to offer the greatest control over the use of the land. The author's strongest objection to this method of control over land use is that it eliminates the management discretion of the landowner. Furthermore, public ownership, even when the land is resold under restriction, involves a very large investment and substantial financial risk. Other alternatives are available which offer the desired control without the problems of public ownership. These alternatives are preferred because the control desired is only that necessary to create a situation in which productive agricultural land is converted to urban uses when the balance of state and region-wide social and economic interest tips in favor of urban development. The objective should not be to protect agricultural land merely for the abstract ideal of preserving it.

Timed Development

Some local units of government have established and enforced a program of "timed development" of their outlying areas. "Timed development" describes a policy which discourages urban development of areas by denying municipal services such as water and sewer to a proposed area until a determination is made that the area is needed for expansion. "Timed development" may also encompass restriction of the construction of roads, curbs and gutters.

> Since construction of roads and such major utilities as sanitary sewer and water systems has a substantial effect on the timing and degree of urban development, some planners recommend that public utilities be used purposely to shape urban development rather than simply to serve it.[95]

Institution of such a policy by a local government could accomplish two objectives. First, it could help insure compliance with the local

93. SARGENT, *supra* note 4, at 4.
94. The constitutional limits on agricultural zoning must also be considered. *Compare* Goldblatt v. Town of Hempstead, 369 U.S. 590 (1962), *with* Pennsylvania Coal Co. v. Mahon, 260 U.S. 393 (1922).
95. Isberg, *supra* note 5, at 157.

comprehensive plan for community growth and thereby stabilize demands upon locally supplied services. Second, it could preserve open spaces for their aesthetic and social benefits and consequently, help protect productive agricultural land from premature encroachment.

One body attempting "timed development" is the Metropolitan Council, created by the Minnesota Legislature in 1967 as the regional planning agency for the Twin Cities Metropolitan Area.[96] In 1970 that Council set down three policies each of which demonstrates the Council's intent to use sanitary sewer extension guidelines to control urban development:

(1) Phase sewer interceptor extensions to promote orderly and economic development;
(2) Extend sewer interceptors into communities only when residents are assured of governmental capability to provide a full range of urban services and to exercise adequate planning and development control; and
(3) Prohibit extension of sewer systems into areas where development should not occur, such as flood plains, airport clear zones, major ground water recharge areas, and areas designated for open space use.[97]

Several problems, however, may be encountered with such a policy. The principal difficulty is that the policy provides no controls over use and construction of private sanitary sewer systems.[98] Furthermore, in order for "timed development" to be an effective land use control tool, all key municipal services will have to be incorporated into the policy.

Finally, it should be noted that before such a policy is implemented it is absolutely necessary that the local government determine exactly which areas should be developed and which areas should be preserved for agricultural production. The policies must be specific. If comprehensive planning has been done before a policy of "timed development" is implemented, the local government will be much better able to resist pressures by land developers to approve extension of the municipal services.[99]

CONCLUSION

The South Dakota Planning Bureau has incorporated in its "Policy Plan for Land Use" the goals of preserving the state's food and fiber producing capacity and protecting areas of prime agricultural land. To accomplish these goals, the Planning Bureau recom-

96. *Id.* at 158.
97. *Id.*
98. *Id.*
99. For a discussion of the constitutional problems which have arisen in "timed development" programs in another context *see* Golden v. Planning Bd., 30 N.Y.2d 359, 285 N.E.2d 291 (1971).

mended that the state enact critical areas legislation and designate prime agricultural land as a critical area. In addition, the South Dakota Planning Commission has recognized and advocated that long-range programs beyond the existing differential assessment program be initiated to provide economic incentives for maintenance of land in agricultural use.

If critical areas legislation is enacted and implemented in the form proposed by the South Dakota Planning Commission, it may serve as a very useful tool in preserving productive agricultural land. More likely, however, such legislation, if enacted at all, will have limited practical application to prime agricultural land and will protect only a very small percentage of the land that should be protected. A broadly based policy incorporating a number of elements that provide the economic incentive to maintain land in agricultural use is needed.

It has been demonstrated that preferential assessment is ineffective in discouraging urban development of farm land. Deferred taxation and restrictive agreements only partially accomplish this goal by furnishing economic incentive for postponing urban development and providing for rollback of taxes for the benefit of the local unit of government. When the economic pressure is strong, the rollback provisions of the deferred taxation and restrictive agreement methods will have little deterrent effect. The effect of these provisions is also limited because their application is dependent upon the initiative of the farmer to apply for the tax break and commit himself to agricultural use of the land for a definite period of years.

For these reasons a further element is necessary to give effect to the land use policy of controlling the conversion of farm land to urban uses. In addition to providing economic *incentives* for the landowners to maintain a certain use, economic *deterrents* should be provided to discourage land speculators and developers from imposing pressures upon the landowners. Agricultural zoning has been considered and rejected because the process is too susceptible to economic and social pressures; public purchase of land is probably too expensive to employ on the needed scale. Thus the most desirable alternative is a "timed development" program.

A combination of economic *incentives* in the form of differential taxation and economic *deterrents* in the form of "timed development" regulations would provide several advantages. Properly drafted policies for the use of differential taxation could arrange for a balancing of the social and economic equities. Development would come about only where there was a real social and economic need. A system of "timed development," whether initiated at the local or state level, would stabilize the demand for municipal and county public services. Such a combination will pre-

serve the maximum possible degree of land management discretion in the farm landowner and still provide for an effective land use control mechanism. Short of nationalization, a combination of use-value assessment and "timed development" would provide the most effective mechanism for the preservation of productive agricultural land.